

Presentation for Export Control Coordinator's Organization: Deemed Exports

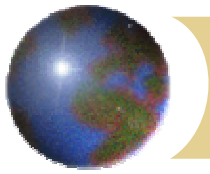
Alex Lopes

Director

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Office of National Security and Technology Transfer Controls

Bureau of Industry and Security



The Deemed Export Issue

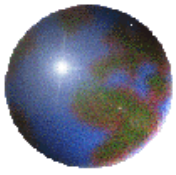
- Foreign nationals in your work place
 - Deemed export rule applies to government agencies (and contractors)
 - Research with access to sensitive equipment
- Release of data to a foreign national is the same as to their country of citizenship
- Requirement for license is driven by commodity classification of data, access required to that technology, and the foreign national's country of origin
- DOE/IG-0645 of April 2004

What is a Deemed Export?

Release in the United States of technology or source code subject to the Export Administration Regulations to a foreign national.

Such release is “deemed” to be an export to the home country or countries of the foreign national.

See Section 734.2(b)(2)(ii) of the EAR.



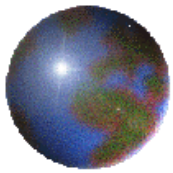
Exempted from the Rule

Any foreign national is subject to the deemed export rule **except**:

- A foreign national granted U.S. citizenship;

- A foreign national granted permanent residence status (i.e., “Green Card” holders);

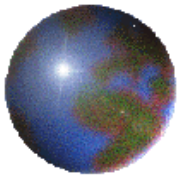
- A foreign national granted status as a “protected individual” under 8 U.S.C. 1324b(a)(3). Protected individuals include political refugees and political asylum holders.



Examples of Deemed Export Releases

- Visit of foreign delegations for company internal technical conferences.
- Visual inspection (as reading technical specifications, plans, blueprints, etc.) by foreign nationals.
- Providing technical assistance (including verbal exchanges) to foreign nationals.





Deemed Export ECCNs

5A101

Telemetry **Equipment**

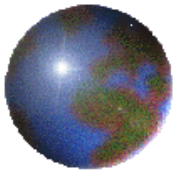
5D101

Telemetry **Software**

5E101

Telemetry **Technology**

The deemed
export rule
primarily
affects
technology
and software.



Is a License Required?

Step 1:

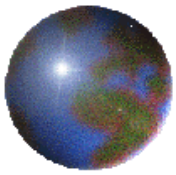
Determine the technologies to be released. It is critical to classify the technology.

Is the technology described in an entry on the Commerce Control List?

If so, does a License Exception apply?

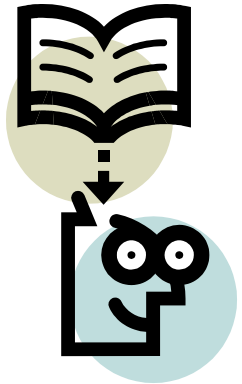
Is the technology EAR99?

Is the technology publicly available?

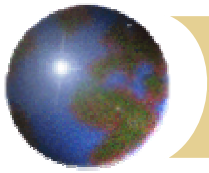


Publicly Available Information

Technologies which are "publicly available" do not require a license. These include:

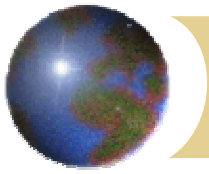


- Patent applications;
- Publicly available technology and software (other than software and technology controlled as encryption items) that are already published or will be published;
- Technology which arises during or as a result of fundamental research; or
- Technology which is educational.



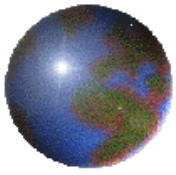
Fundamental Research

- Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.
- There may be deemed export license implications if the technology required to conduct the research is controlled by the EAR (e.g., use of equipment)
- Fundamental research needs to be distinguished from the release of controlled “use,” “production,” or “development” technology that may need a deemed export license if required for a foreign national to conduct research



Licenses for Government Agencies

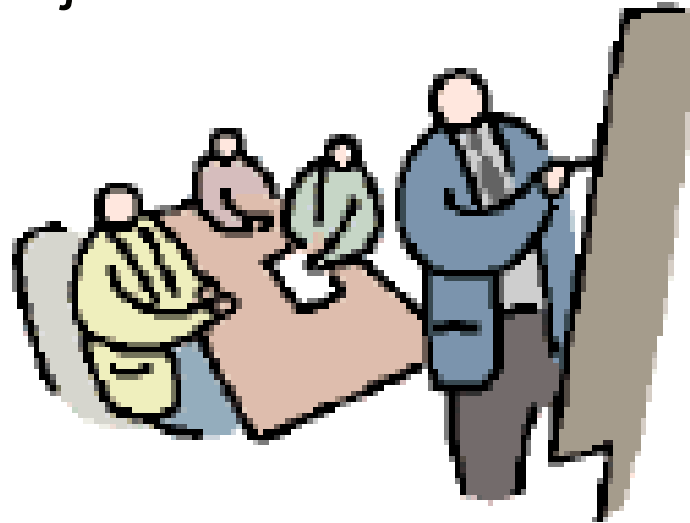
- Release of controlled technologies by U.S. Government agencies and affiliates are treated in the same way as release of controlled technologies by private entities.
- National Security Classification and export controls are separate concepts.
- Federal fundamental research and private research receive identical licensing review.
- There is no blanket deemed export licensing exemption for government agencies



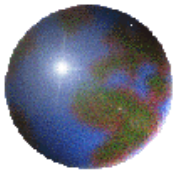
Example:
Conferences

The release of information at an open conference is not subject to the EAR.

A conference is “open” if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes.



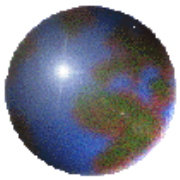
Technologies discussed in open seminars and conferences are considered to be publicly available and are outside the scope of the EAR.



Is a License Required?

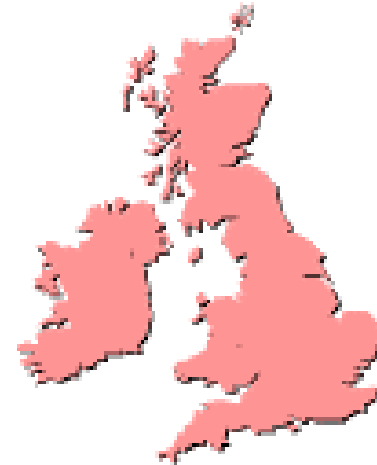
Step 2:

- Determine the home country of the foreign national.
- Technology and home country of the foreign national determine licensing requirements.

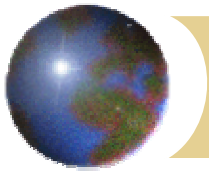


Home Country (Dual Citizenship)

As a general principle, a foreign national's most recently obtained citizenship governs the licensing requirement.

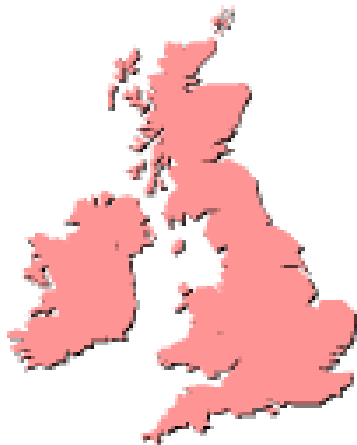
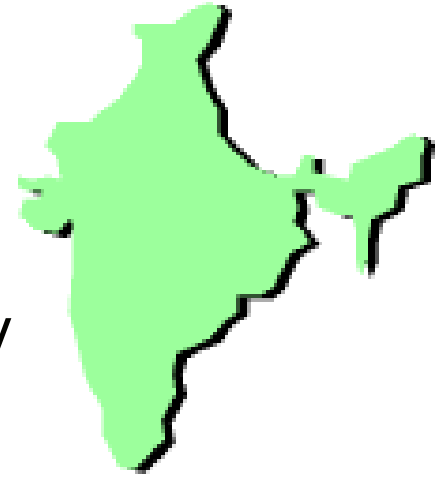


If an Indian foreign national becomes a citizen of the U.K. but retains Indian citizenship, the most recent citizenship is with the U.K. and releases of technology would be viewed as releases to the U.K.



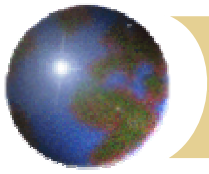
Home Country (Permanent Residency)

Release of controlled technology to a foreign national of one country, say India, who has obtained permanent residency in another, say the U.K., is treated as if the shipment were being made to the U.K. and licensing requirements would be the same as for a British national in the U.K. *



If the former Indian national becomes a British citizen, transfers of technology would be viewed as transfers to the U.K.

*** This policy is currently under review.**



Remember

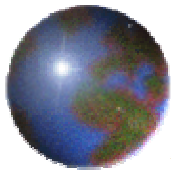
Although the deemed export rule may apply, this does not automatically mean that a license is required.

The technology to be released to the foreign national may be:

- Publicly Available;

- EAR99;

- License Exception eligible (e.g., TSU, TSR, ENC)



Parties of Concern:

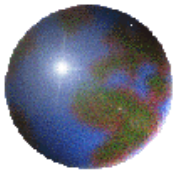
- ✓ **Denied Persons List**
- ✓ **Entity List**
- ✓ **Specially Designated Nationals and Blocked Persons**

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♥ Caught



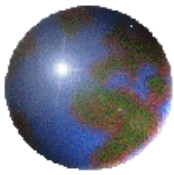
HUDA SALIH MAHDI AMMASH
WMD Scientist/
Ba'th Party Regional
Command Member



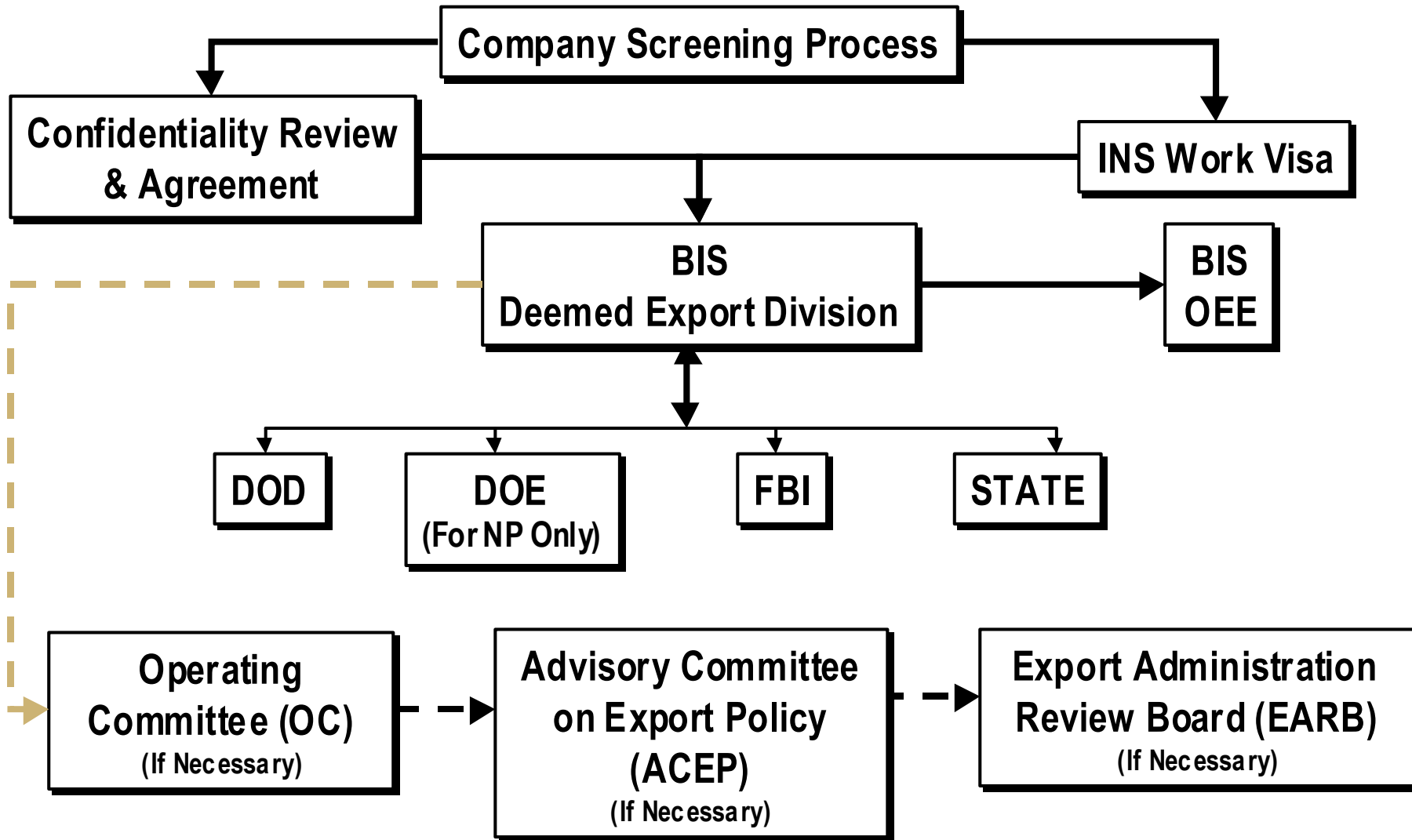


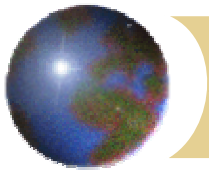
Listed Entity Involvement

Release of controlled technology to an employee of a listed entity is treated as a release of controlled technology to the listed entity itself.



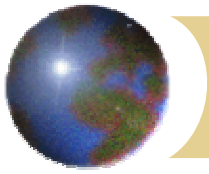
Review and Escalation Process





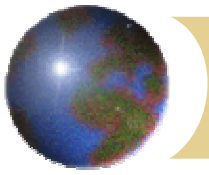
Deemed Export Evaluation Factors

- Personal background, including visa status
- Technology and purpose of the release
- Applicant's Technology Control Program
- Projected outcome of employment
- Permanent employee



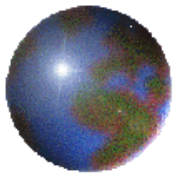
Required Information: Letter of Explanation

- Identities of all parties to the transaction
- Exact project location (where the technology or software will be used)
- Type of technology
- Form in which the technology will be released and the uses for which the technology will be employed.
- Technical scope
- Availability abroad of comparable foreign technology or software
- Applicant's technology control plan



Essential Elements of a Technology Control Plan

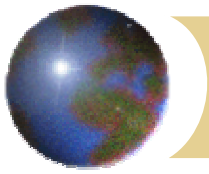
- Corporate commitment to export compliance
- Physical security plan
- Information security plan
- Personnel screening procedures
- Training and awareness program
- Self evaluation program



Required Information:

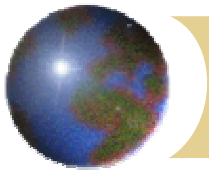
Foreign National's Résumé

- All educational institutions attended beyond high school, with street addresses and degrees and/or certificates received
- All positions held, with employers' names and street addresses, and brief description of work done
- All time from high school graduation should be accounted for and presented in month/year format, with no gaps greater than 30 consecutive days
- Brief abstracts of all scientific and technical papers published, and presentations at scientific and technical conferences



Helpful Information

- Applications are easier to approve if they include details such as:
 - Any strong ties to the U.S. (e.g., family here)
 - No ties to home country (no bank account, immediate family, etc.)
 - Any special benefits or expertise the foreign national brings to the applicant (i.e., why the foreign national brings more to the company than he or she will take away)



Most Commonly Licensed Technologies for Deemed Exports

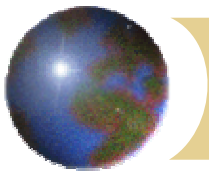
Semiconductor & Electronics

Telecommunications

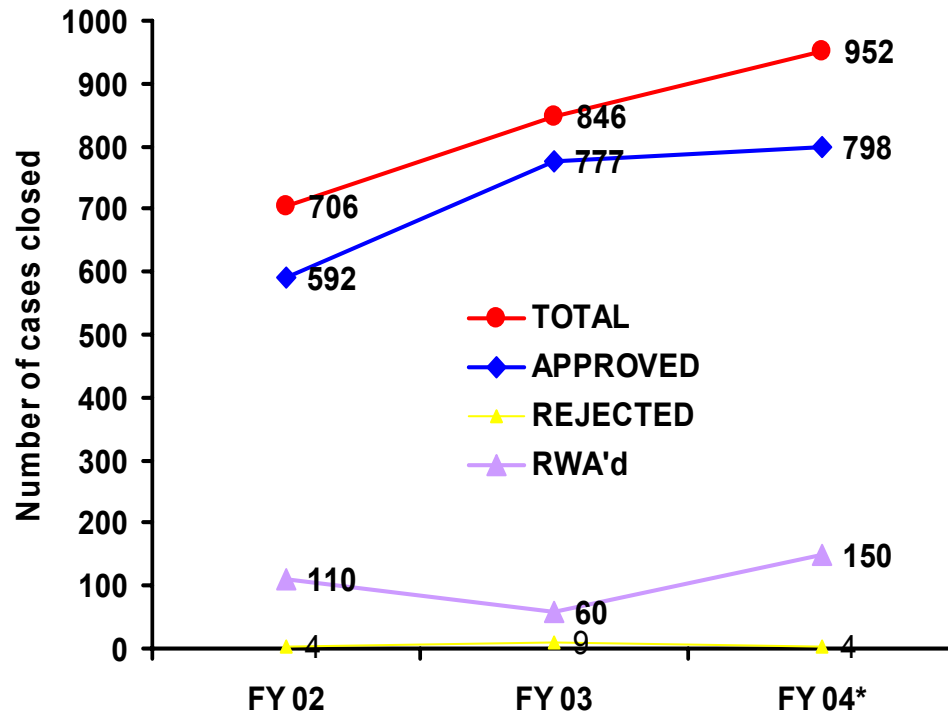
Computer Systems

Top deemed exports ECCNs include:

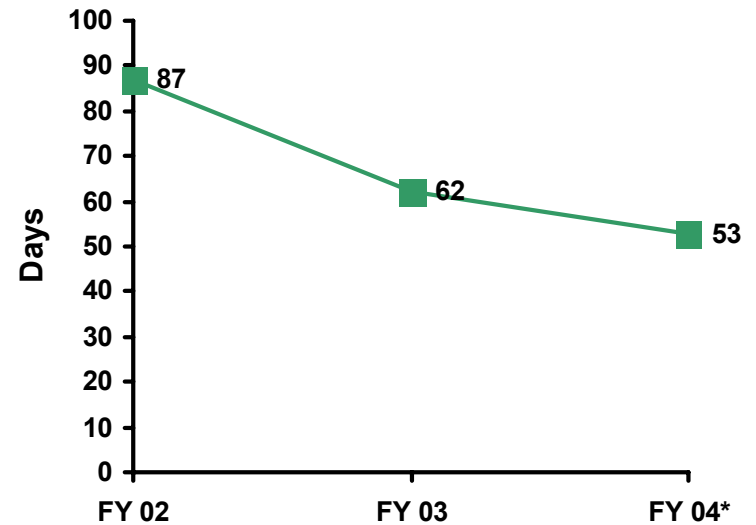
4E001, 3E001, 5E001, 4D003, and 3E002



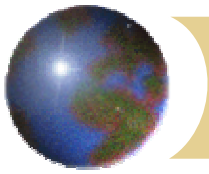
Deemed Exports Licensing Data



* Projected based
on mid-yr stats

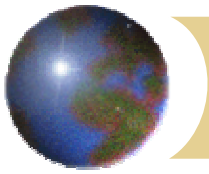


* Projected based
on mid-yr stats



Deemed Export Initiatives

- Recently Implemented Process Improvements
 - Automatic six month extensions for existing licenses being renewed
 - Tying license validity to visa expiration
 - Interagency best effort to review license upgrades in 20 days
- Special Intra-company License
- Proposed rule changes for microprocessor and high performance computer technology



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